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SEP 03 2009

OFFICE OF PETITIONS

In re Application of	:
Fagan, et al.	:
Application No. 10/539,962	:
Filed: June 17, 2005	:
Docket No. C&R-106	:
	: LETTER REGARDING
	: PATENT TERM ADJUSTMENT

This is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed July 14, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **41 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 18, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 164 days. On July 14, 2009, applicants submitted the instant comment. Applicants disclose that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated.

On November 13, 2007, the Office mailed a Restriction Requirement. Applicants filed an election on December 13, 2007. On March 26, 2008 the Office mailed a Notice to Comply that stated the December 13, 2007 submission contained an omission that required correction. Specifically, the elected claims contained sequences for which no Sequence Listing had been

submitted. On April 14, 2008, applicants filed a supplemental preliminary amendment with an appropriate Sequence Listing. The April 14, 2008 supplemental preliminary amendment corrected the omission in the December 13, 2007 election. Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment should have been reduced by 123 days pursuant to 37 CFR 1.704(c)(7), counting the number of days beginning on the day after the date the reply having an omission was filed, December 14, 2007, and ending on the date that the reply correcting the omission was filed, April 14, 2008. Accordingly, a period of reduction of 123 days will be entered.


In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **41 days** (165 days of Office delay - 124 days of applicant delay).

As this letter was submitted to advise the Office of an error in applicants' favor, the Office will refund the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Monday
Date: 8/31/2009

PALM INTRANET

Time: 20:57:39

PTA Calculations for Application: 10/539962			
Application Filing Date:	11/13/2006	PTO Delay (PTO):	165
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	1
Post-Issue Petitions:	0	Total PTA (days):	41
PTO Delay Adjustment:	-123		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
62	08/31/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		123	
56	06/18/2009	MAIL NOTICE OF ALLOWANCE			
55	06/17/2009	ISSUE REVISION COMPLETED			
54	06/18/2009	DOCUMENT VERIFICATION			
53	06/18/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
52	06/18/2009	EXAMINER'S AMENDMENT COMMUNICATION			
51	06/18/2009	NOTICE OF ALLOWABILITY			
50	06/02/2009	DATE FORWARDED TO EXAMINER			
49	04/27/2009	RESPONSE AFTER NON-FINAL ACTION		1	48
48	01/26/2009	MAIL NON-FINAL REJECTION	165		41
47	01/21/2009	NON-FINAL REJECTION			
44	05/14/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	12/22/2008	CASE DOCKETED TO EXAMINER IN GAU			
42	12/04/2008	DATE FORWARDED TO EXAMINER			
41	04/14/2008	RESPONSE AFTER NON-FINAL ACTION			
40	11/13/2006	371 COMPLETION DATE			
39	06/23/2008	APPLICATION RETURN FROM OIPE			
38	06/23/2008	NOTICE OF DO/EO ACCEPTANCE MAILED			
37	06/23/2008	FILING RECEIPT			
36	11/13/2006	ADDITIONAL APPLICATION FILING FEES			
34	05/14/2007	INFORMATION DISCLOSURE STATEMENTS			
33	04/25/2008	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
32	04/25/2008	CRF DISK HAS BEEN RECEIVED BY PREEXAM /			

		GROUP / PCT			
31	06/19/2008	APPLICATION RETURN TO OIPE			
30	04/25/2008	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
29	03/26/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
28	03/19/2008	MISCELLANEOUS ACTION WITH SSP			
27	01/18/2008	DATE FORWARDED TO EXAMINER			
26	12/13/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
25	11/13/2007	MAIL RESTRICTION REQUIREMENT			
24	11/08/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
20	08/17/2007	CASE DOCKETED TO EXAMINER IN GAU			
19	08/04/2007	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	06/21/2007	PG-PUB ISSUE NOTIFICATION			
13	05/14/2007	REFERENCE CAPTURE ON IDS			
12	05/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	05/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	04/11/2007	APPLICATION DISPATCHED FROM OIPE			
8	03/16/2007	SENT TO CLASSIFICATION CONTRACTOR			
5	11/13/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	03/10/2007	CORRESPONDENCE ADDRESS CHANGE			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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